

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

MAY 28 PM 4:02

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

89
REPT'D.

IRENE RAMIREZ, as Heir of Decedent Jesus Jose
Chavez Ramirez, SANTOS LOPEZ, and JUAN
CASTANON,

Plaintiffs,

-vs-

Case No. A-15-CA-108-SS

IRON ROCK RESOURCES, INC., ALLIANCE
RECYCLERS, KYLE BRENDLE, and MELVIN
HAMMIT,

Defendants.

O R D E R

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Defendants Iron Rock Resources, Inc., Alliance Recyclers, Kyle Brendle, and Melvin Hammit's Motion to Dismiss [#9] and Plaintiffs Irene Ramirez, Santos Lopez, and Juan Castanon's Response to Defendants' Motion to Dismiss and Motion to Transfer to Northern District of Texas—Fort Worth Division [#10]. Having reviewed the documents, the governing law, and the file as a whole, the Court now enters the following:

This is a Fair Labor Standards Act (FLSA) case. Plaintiffs allege Defendants, two Texas companies involved in the demolition and recycling business and two owners, officers, and managers of said companies, violated the FLSA by failing to pay their employees overtime wages. According to Plaintiffs, Defendants paid forty hours per week under the name of Iron Rock Resources, Inc., and paid additional hours worked under the name of Alliance Resources, Inc. Plaintiffs seek unpaid overtime wages, liquidated damages, and all additional damages to which they are entitled.

Plaintiffs filed their complaint on February 5, 2015. *See* Compl. [#1]. Defendants were served on or about February 13, 2015; their deadline to respond to the complaint was therefore March 6, 2015. *See* FED. R. CIV. P. 12(a)(1)(A)(i). On March 6, 2015, Defendants filed a motion for extension of time to respond to the complaint; Plaintiffs did not oppose the motion. *See* Unopposed Mot. Extension [#5]. The Court granted the motion and gave Defendants until March 27, 2015, to respond to the complaint. *See* Order of March 18, 2015 [#6]. On March 27, 2015, Defendants filed a second motion for extension of time to respond to the complaint; again, Plaintiffs did not oppose the motion. *See* Second Unopposed Mot. Extension [#7]. The Court once again granted the motion, giving Defendants until April 17, 2015, to respond to the complaint. *See* Order of March 20, 2015 [#8].

On April 17, 2015, Defendants filed the instant two-page motion to dismiss, arguing the action should be dismissed because venue is improper in this district. *See* Mot. Dismiss [#9]. In their response, Plaintiffs state they filed suit here under the erroneous belief that Erath County, the principal place of business of Defendants Iron Rock Resources, Inc. and Alliance Recyclers and the domicile of Defendant Melvin Hammit, was located in the Western District of Texas. Plaintiffs acknowledge this suit should have been filed in the Northern District of Texas, Fort Worth Division.

Apparently, despite the fact that Plaintiffs agreed to two extensions of time for Defendants to respond to their complaint, Defendants oppose a motion to transfer venue to the Northern District. The Court notes Plaintiffs allege Defendants' violation of the FLSA was willful, entitling them to a three-year limitations period. Cognizant the date of filing suit directly affects how much or even whether FLSA plaintiffs can recover in the event their employers are found liable, the Court declines to dismiss this case. Defendants delayed, for forty-two days, the filing of their exceptionally

compact motion to dismiss. This delay will severely prejudice plaintiffs by reducing the damages some may be entitled to recover and, perhaps, by time-barring some plaintiffs' claims entirely. The Court finds a transfer, rather than a dismissal, is clearly in the interest of justice. *See* 28 U.S.C. § 1406; *Burr v. Transohio Sav. Bank*, 77 F.3d 477 (5th Cir. 1995) (unpublished) (citing *Minnette v. Time Warner*, 997 F.2d 1023, 1027) (2d Cir. 1993)) (noting dismissal does not serve the purposes of the venue statute where dismissal will create a time bar).

Accordingly:

IT IS ORDERED that Defendants Iron Rock Resources, Inc., Alliance Recyclers, Kyle Brendle, and Melvin Hammit's Motion to Dismiss [#9] is DENIED;

IT IS FURTHER ORDERED that Plaintiffs Irene Ramirez, Santos Lopez, and Juan Castanon's Motion to Transfer to Northern District of Texas—Fort Worth Division [#10] is GRANTED;

IT IS FINALLY ORDERED that the above-styled and numbered cause is hereby TRANSFERRED to the United States District Court for the Northern District of Texas, Fort Worth Division.

SIGNED this the 28th day of May 2015.



SAM SPARKS
UNITED STATES DISTRICT JUDGE